



December 22, 2021

VIA E-MAIL
Michael.Boutte@LA.Gov

Mr. Michael Boutte
Medicaid Deputy Director
Louisiana Department of Health
628 N. Fourth Street
Baton Rouge, LA 70821

Re: Request for Reconsideration of Notice of Monetary Penalty – Community Case Management Implementation

Dear Michael:

Aetna Better Health of Louisiana (“Aetna”) respectfully submits this request for reconsideration of the imposition of a monetary penalty as detailed in your letter dated December 16, 2021, regarding the contract execution and implementation of community case management services pursuant to the State’s DOJ Agreement.

Pursuant to the State Contract, LDH has multiple options when addressing potential contract non-compliance issues. The State Contract grants LDH discretion when imposing monetary penalties. When imposing a monetary penalty, Section 20.3.1 of the State Contract requires LDH to consider several factors, including:

- The duration of the violation;
- Whether the violation (or one that is substantially similar) has previously occurred;
- The MCO’s history of compliance;
- The severity of the violation and whether it imposes an immediate threat to the health or safety of the Medicaid members; and
- The “good faith” exercised by the MCO in attempting to stay in compliance.

Aetna respectfully suggests that when each of these factors are taken into consideration, withdrawal of the fine is warranted. Attached is a detailed timeline of Aetna’s efforts to cooperate with LDH-OBH in good faith in the procurement process requested by LDH-OBH for these services, which are not the typical manner by which Aetna procures vendors, as well as its good faith efforts to complete the contract with the selected vendor, Merakay. Aetna is confident it will have an executed agreement to provide LDH no later than January 6, 2022. Aetna believes implementation will not be delayed and will be complete by the deadline of January 17, 2022.

Aetna understands that LDH has responsibilities, including oversight of the MCOs’ efforts, related to the DOJ settlement. However, Aetna respectfully submits that the imposition of a \$5,000 penalty per day beginning November 12th is not reasonable, unnecessarily punitive in relation to the severity of the violation, does not threaten the health and safety of Medicaid members, and does not achieve compliance with the January 17 deadline any sooner than projected. The negotiation of this contract began in good faith promptly upon notice from LDH-OBH. Aetna has diligently been working on participation in the collaborative procurement process desired by LDH, identifying a vendor, and then negotiating the terms, conditions, and reimbursement of the services with the vendor. It should be noted that Aetna was not even provided the scoring materials until November 2, 2021. The current delay is *providing an executed copy to LDH*. There is no evidence that Aetna will not timely finalize and execute the agreement with Merakay by the January 17 implementation deadline established by LDH. The importance of

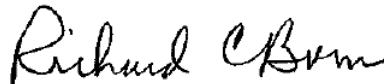
carefully vetting and negotiating these services can not be overstated. Aetna takes its responsibility very seriously and will not unnecessarily rush into executing an agreement that does not properly protect the interests of the members that will be served.

The imposition of a fine for missing the arbitrary and interim milestone deadline of November 12 when Aetna, (i) in good faith, (ii) worked cooperatively with LDH to procure these services in an atypical manner, outside of its normal vendor selection and contracting processes, (iii) when it didn't even receive the scoring materials until November 2, and (iv) when the most important deadline is achieved, is unduly harsh. More importantly, Aetna is confident that LDH's final deadline of January 17, 2022, will be achieved, and that there is thus no threat to the health, safety, or receipt of services for our members.

Based upon the foregoing, and the express criteria set forth in the State Contract for determining the imposition of fines, Aetna respectfully submits that the imposition of a penalty, under these very specific circumstances, serves no overriding state purpose and should be withdrawn. Alternatively, Aetna respectfully submits should LDH determine not to withdraw the fine, that it would be an appropriate exercise of LDH's discretion to fully suspend the fine, conditioned upon Aetna's compliance with the January 17, 2022, deadline.

Thank you for your consideration of this request. If you would like to see copies of any documents, or other information to support the contentions herein, Aetna will be happy to provide those to you upon request. Aetna values its relationship with the State of Louisiana and looks forward to working with LDH now and in the future to provide quality and cost-effective health care to its Healthy Louisiana enrollees.

Sincerely,



Richard C. Born
Chief Executive Officer

AETNA BETTER HEALTH OF LOUISIANA

CC: A.J. Herbert III (aherbert@taggartmorton.com)

EXHIBIT A

Date (all in 2021)	Activity
5/17	LMMA meets to discuss LDH's request for the MCO's to jointly select the case management provider. Legal concerns are raised and each MCO agreed to take the proposal back to its legal counsel. LMMA also seeks and obtains a legal opinion from its own counsel on issues with LDH's proposed structure.
5/28	Call scheduled with LDH counsel and all MCO legal counsel to discuss legal concerns with LDH's proposal, and to suggest options to address those concerns.
June	MCO legal counsel develops and presents, through the LMMA, contracting options for the vendor which are agreeable to all 5 MCO's.
July	LDH selects its preferred option and work begins on the procurement process.
7/20	LDH provides guidance on Key Activities and Timeframes
9/27	Initial meeting with LDH and health plan staff to discuss the timeline expectations for the CCM contracts, given that there are few agencies who have expressed interest and they must be NCQA accreditation.
9/29	LDH communicates that it has received confirmation from NCQA that community-based case management agencies do not need to be NCQA accredited in order for the MCOs to maintain their NCQA accreditation status
10/24	Medicaid Vendor Management (MVM) advised of vendor need for DOJ CCM project
10/25	Internal review conducted to determine if a contracted vendor already exists. None found
10/26	Merakey and Easterseals, among others, identified as potential vendors to support DOJ CCM project
11/12	Medicaid Vendor Approval Forms submitted for both Merakey and Easterseals
11/15	DOJ Agreement Compliance Guide published
11/15	Enterprise Third Party Risk Management (ETPRM) engaged to assess data security risks for both Merakey and Easterseals
11/15	CVS Procurement engaged to begin contracting efforts with both Merakey and Easterseals (CVS Procurement SLA is 90 days for net new vendors)
11/16	CVS contract templates provided to both Merakey and Easterseals
11/16	ETPRM request to expedite review submitted
11/18	CVS Procurement Contracts added to project request.
11/23	Medicaid finance provided financial approval for the projects
11/29	Merakey provided cost sharing proposal to Aetna to share 1/5 of the total project cost
12/1	ETPRM approved exception to allow execution of contracts while data security review is underway
12/1	CVS Procurement negotiation final terms and conditions for the Professional Services Agreement regarding insurance, data security, business associate agreements, data privacy, Louisiana Regulatory Compliance Addenda, etc.
12/1	CVS Procurement Contracts and business team seek internal exceptions to process contract ahead of requisite risk assessment
12/1	CVS contracts are shared with vendor for feedback; requested turnaround from vendor by 12/6/21
12/2	ABH LA proposed PMPM cost structure to Merakey, Merakey rejected proposal
12/2	Pricing discussions continue with vendor
12/3	ABH LA proposed cost sharing structure commensurate with ABH LA membership utilization
12/7	Vendor replies that contract review is still ongoing (pricing discussions continue with vendor)
12/9	Merakey accepted adjusted cost sharing structure to align with actual membership utilization
12/10	CVS Procurement Contracts reaches out to Merakey to follow up on review of documents/reiterates year-end criticality

12/13	Easterseals advised they would not continue to support this project for ABHLA
12/13	CVS Medicaid team shares LARCA
12/13	Business team reaches out to Merakey to request status of review of documents
12/13	Vendor returns drafts of PSA with redlines
12/13	CVS Procurement Contracts reviews and returns response to vendor on redlines
12/15	CVS Procurement Contracts reaches out to Merakey to follow up on review of documents/reiterates for year-end criticality
12/16	CVS Medicaid/business team follows up with Merakey to request status of review of documents
12/16	CVS Procurement Contracts reaches out to Merakey to follow up on review of documents/reiterates for year-end criticality
12/16	CVS Procurement receives response from vendor
12/16	CVS procurement and insurance team review and mitigate required insurance coverage from the vendor to match their COI provided on 12/16
12/17	CVS requests additional clarity from the vendor and business on privacy coverage to determine if that amount can also be reduced to mitigate cost to vendor/fast-track execution timeline
12/17	SOW is drafted/finalized/approved by the parties
12/17	Vendor responds that items are under review/checking with insurance broker
12/17	Merakey communicated acceptance of the Statement of Work
12/20	Response received from vendor regarding insurance. CVS insurance reviewer and business team resolving appropriate coverage amount for privacy